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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

GINO ROBERT REA,

Defendant-Appellee.

_____/

Supreme Court
Case No.: 153908

Court of Appeals
Case No.: 324728

Oakland County Circuit Court
Case No.: 14-250517-FH

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DEFENDANT-APPELLEE'S BRIEF IN OPPOSITION OF PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF JURISDICTION

Defendant-Appellee does not dispute that the Michigan Supreme Court has jurisdiction over this appeal pursuant to MCR 7.303(B)(1), which provides that the Supreme Court may review a case by appeal after a decision by the Court of Appeals.

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COUNTER-STATEMENT OF QUESTION PRESENTED

I. DID THE MAJORITY OF THE COURT OF APPEALS MAKE A "CLEARLY ERRONEOUS" DECISION THAT WILL RESULT IN "MATERIAL INJUSTICE" WHEN IT DETERMINED THAT THE UPPER-PORTION OF DEFENDANT-APPELLEE'S PRIVATE RESIDENTIAL DRIVEWAY, WHICH IS ENCOMPASSED WITHIN THE BACKYARD/SIDE-YARD OF HIS RESIDENCE, DOES NOT CONSTITUTE A PLACE "GENERALLY ACCESSIBLE TO MOTOR VEHICLES" UNDER MCL 257.625(1)?

Plaintiff-Appellant:	Yes.
Defendant-Appellee:	No.
Oakland County Circuit Court:	No.
Court of Appeals:	No.

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COUNTER-STATEMENT OF FACTS

In the underlying criminal proceeding, Mr. Rea was charged with operating while intoxicated, in violation of MCL 257.625(1) (Third Offense Notice).[1] The charged offense stems from an incident that is alleged to have occurred on or about March 31, 2014, when Mr. Rea was arrested by officers of the Northville Police Department after they observed him operate his vehicle while intoxicated on the upper-portion of his private residential driveway, which is encompassed within the backyard and/or side-yard of his residence. Since the inception of the instant matter, there has been a discrepancy as to whether the area upon which Mr. Rea operated his vehicle constitutes an area that is "generally accessible to motor vehicles" under MCL 257.625(1).

A preliminary examination in this matter was held on May 9, 2014, and continued on May 30, 2014, at the 35th District Court before the Honorable James A. Plakas. The prosecution called a single witness at the preliminary examination: Officer Kenneth DeLano of the Northville Police Department. The preliminary examination testimony, which is pertinent to the issue before this Court, may be summarized as follows.[2]

Officer DeLano responded to Mr. Rea's residence three times on or about March 31, 2014 to investigate noise complaint(s) reported by Mr. Rea's neighbor. (PET, pp. 6-9.) When Officer DeLano arrived at Mr. Rea's residence for the third time, he parked his patrol

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1. Plaintiff-Appellant emphasizes the fact that the Defendant-Appellee has several prior convictions. However, the number of Mr. Rea's prior convictions is simply not relevant to a determination of the issue(s) before the Court. The relevant inquiry is whether Mr. Rea's conduct fell within MCL 257.625(1). For purposes of addressing this inquiry, it does not matter whether the instant matter consists of Mr. Rea's first operating while intoxicated charge or his fifth.

2. The preliminary examination transcript is separated into two volumes. All references to "PET" refer to the transcript of the initial preliminary examination date and all references to "PET II" refer to the transcript of the continued preliminary examination, which was held on May 30, 2014. Specific references will be made to the relevant portion(s) of the transcript(s).

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vehicle in the street in front of Mr. Rea's driveway. (PET, p. 21, 18-24.) The patrol vehicle blocked the entryway of Mr. Rea's driveway and precluded any and all vehicles from entering or exiting the driveway. (Id.) Officer DeLano thereafter observed Mr. Rea open his garage door and reverse his vehicle out of his garage and into the upper-portion of his residential driveway. (PET, p. 21, 12-13.) The vehicle stopped after traveling approximately twenty-five (25) feet down the driveway, and at that time, the vehicle was positioned between Mr. Rea's house and the fence separating his yard from his neighbor's yard. (PET, p. 10, 11-12; p. 11, 2-6; p. 15, 9-11.) Mr. Rea's vehicle was approximately fifty (50) feet from the roadway and approximately twenty-five (25) feet from his neighbor's house. (PET, p. 25, 8-13.) Mr. Rea never operated his vehicle in the street, nor did he cross or come near the sidewalk. (PET, p. 28, 7-12.)

At the conclusion of the presentation of testimony at the preliminary examination, it was clear that the issue was whether the area upon which Mr. Rea was alleged to have operated his vehicle while intoxicated constituted an area "generally accessible to motor vehicles" under MCL 257.625(1). Specifically, the issue was whether Mr. Rea could be bound over on the charged offense for simply reversing his vehicle out of his garage and into the upper-portion of his residential driveway, which is encompassed within the backyard/side-yard of his residence. The matter was adjourned so that the parties could brief the issue and arguments regarding the same were heard on May 30, 2014.

The prosecution argued that Mr. Rea's private residential driveway was an area "generally accessible to motor vehicles," primarily relying on the conclusory statement made by the Court of Appeals in People v Campbell, that private driveways are "generally

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accessible to motor vehicles."[3] People v Campbell, unpublished opinion per curiam of the Court of Appeals, issued May 13, 2008 (Docket No.: 274823). Defense counsel distinguished the facts of the present matter from the case(s) cited by the prosecution, and contended that Mr. Rea's private residential driveway does not constitute an area that is "generally accessible to motor vehicles." The district court judge expressed hesitation, stating, "I'll be brutally honest in that to me it's almost a flip of the coin," but ultimately decided to bind Mr. Rea over for trial on the charged offense, indicating:

> If you look at the term 'generally accessible to motor vehicles' and to then look at the facts of the Campbell case and pushing the standing argument aside you could almost take that and use it against Mr. Rea in this situation because it does show that – based in that court in this instance – those facts show that someone else was able to access somebody else's driveway. Because driveways, unless they have a gate across them, they are generally accessible to a motor vehicle. The prosecutor did make reference to sidewalks and people walking on sidewalks and potentially being hit by cars and sidewalks pass through driveways. And then there's 18 feet from beneath the driveway. I don't know if he went as far to reference the apron. Vehicles do drive up into driveways that aren't theirs, they do so to turn around when lost or they realize they're going in the wrong direction. It's a probable cause hearing and based on the standard that applies at a probable cause hearing I am going to bind-over in this matter.

(PET II, p. 15, 13-25; p. 16, 1-6.)

The matter was subsequently bound over to the Oakland County Circuit Court and assigned to the Honorable Colleen O'Brien. On or about August 26, 2014, counsel for defendant filed a Motion to Quash with the court, wherein it was argued that the district

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3. In People v Campbell, supra, the Michigan Court of Appeals briefly addressed the applicability of MCL 257.625(1) to a defendant's operation of a vehicle on another individual's private driveway. However, the factual circumstances presented in Campbell are wholly distinguishable from those of the instant matter, and therefore, Campbell, an unpublished decision, should not be considered controlling authority.

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court erred in binding the defendant over for trial because the upper-portion of Mr. Rea's private residential driveway, which is encompassed within the backyard/side-yard of his residence, did not constitute an area "generally accessible to motor vehicles."

An evidentiary hearing was held on October 17, 2014.[4] Officer DeLano was the only witness called to testify at the hearing. Officer DeLano testified that he parked his vehicle at the end of Mr. Rea's driveway when responding to the third dispatch, and observed Mr. Rea reverse his vehicle approximately twenty-five (25) feet from his garage, thereby positioning his vehicle "pretty close to the front of the house." (EHT, p. 24, 13-15; pp. 17-18.) Officer DeLano approached the vehicle and initiated contact with Mr. Rea behind the fence-line, which is encompassed within the backyard and/or side-yard of Mr. Rea's residence. (EHT, p. 25, 2-17.) Officer DeLano stated that Mr. Rea's vehicle never crossed the fence-line or the front of Mr. Rea's house, and further, that Mr. Rea's vehicle never left the upper-portion of his driveway, which is encompassed within his backyard/sideyard.[5] (EHT, p. 26, 8-10; p. 30, 8-12; p. 32, 10-12.) Furthermore, Officer DeLano testified that Mr. Rea never operated his vehicle on the public street or on private property other than

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4. All references to "EHT" contained herein refer to the transcript of the October 17, 2014 evidentiary hearing. The parties stipulated to the admission of certain photographs and a survey depicting the area(s) in question at the hearing; copies of the exhibits admitted at the evidentiary hearing (Exhibits A-F) are annexed hereto as Appendix A. Officer DeLano confirmed, by way of testimony, that the aforementioned photographs accurately depict the layout of Mr. Rea's property. (EHT, pp. 22-24; pp. 27-30.)

5. Plaintiff-Appellant contends that Mr. Rea's operation did not occur in the backyard and/or sideyard of his residence, but rather was simply "on his paved driveway connecting his detached garage to the street." (Plaintiff-Appellant's Application for Leave to Appeal, p. 17.) Plaintiff-Appellant claims that any argument by Defendant-Appellee indicating the same is "misleading." (Id.) Plaintiff-Appellant's assertions are simply inaccurate. The record conclusively establishes that at all times relevant hereto Mr. Rea's vehicle was located within the backyard and/or sideyard of his residence. See EHT, p. 26, 11-13 (Counsel for Defendant: "At all times he was either in his side yard or in his own backyard, correct?" Officer DeLano: "Yes, sir.")

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his own. (EHT, p. 30, 8-22.)

At the conclusion of testimony, the prosecution argued that the Motion to Quash should be denied, once again citing the conclusory statement set forth by the court in People v Campbell, supra, that private driveways are "generally accessible to motor vehicles." (EHT, p. 35, 1-18.) Defense counsel distinguished Campbell from the present matter and argued the points set forth in Defendant's Motion to Quash. (EHT, pp. 38-40.) A written opinion was issued by the circuit court on October 30, 2014. The court concluded that the upper-portion of Mr. Rea's private residential driveway did not constitute an area that is "generally accessible to motor vehicles" under MCL 257.625(1) and granted Defendant's Motion to Quash. [6]

The prosecution subsequently filed a claim of appeal with the Michigan Court of Appeals. The prosecution argued that it was error for the circuit court to grant Defendant's Motion to Quash. The parties submitted briefs to the Court of Appeals and oral argument was heard on February 9, 2016. On April 19, 2016, the majority of the Court of Appeals rendered a decision affirming the circuit court's decision to grant Defendant's Motion to Quash. People v Rea, __ Mich App __ (2016) (Docket No.: 324728). The majority held that the circuit court's decision was proper due to the fact that the prosecution failed to establish probable cause to believe that Defendant operated a vehicle upon "[a] place generally accessible to motor vehicles." Rea, __ Mich App at __; slip op at 3. The majority

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6. The circuit court distinguished the cases relied on by the prosecution from the matter before the court, indicating that "the upper portion of Defendant's private residential driveway, which is encompassed within his backyard/sideyard, cannot be compared to a pit area of a speedway [as] [in] [Nickerson]" and, "Defendant operated his vehicle on his own property, whereas in Campbell the defendant's operation of his vehicle did not take place on his own, private, residential property." See Opinion and Order, dated October 30, 2014.

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noted that Defendant merely drove his vehicle from his garage to a point in his private driveway in line with his house and that the relevant portion of the Defendant's private driveway is only accessible "to a small subset of the universe of motor vehicles, including those belonging to the homeowner or those using the driveway with permission." Rea, __ Mich App at __; slip op at 4. In concluding that the relevant portion of the Defendant's driveway does not constitute an area "generally accessible to motor vehicles," the majority emphasized that the plain language of the statute indicates that the Legislature did not intend to prohibit the offense in "every place in which it is physically possible to drive a car," and further, that the term "generally" modifies the word "accessible," which indicates that the Legislature meant to limit the reach of statute. Id. at __; slip op at 4. The dissenting opinion, authored by the Honorable Kathleen Jansen, held that "whether the upper portion of defendant's private driveway was generally accessible to motor vehicles is a question of fact for the trier of fact to determine after hearing the evidence in the case." Rea, __ Mich App at __, slip op at 1 (JANSEN, J., dissenting).

Plaintiff-Appellant subsequently filed an Application for Leave to Appeal with this Court, requesting that this Court peremptorily reverse the majority decision of the Court of Appeals, or alternatively, grant leave to appeal. (Plaintiff-Appellant's Application for Leave to Appeal, p. 19.) [7] Plaintiff-Appellant contends that "the majority decision from the Michigan Court of Appeals is clearly erroneous and will result in a miscarriage of justice" "because defendant's actions fell within the plain language of MCL 257.625(1)," and further, because "[the] [majority] failed to give effect to the plain meaning of the phrase

7. Plaintiff-Appellant's Application for Leave to Appeal will hereinafter be referred to as "Application" with references to relevant pages.

'generally accessible to motor vehicles.' " (Application, p. 8; p. 10.) However, as the following analysis will indicate, the decision issued by the majority of the Michigan Court of Appeals affirming the circuit court's decision to grant Defendant's Motion to Quash was not "clearly erroneous," as the upper-portion of Defendant's private residential driveway, which is encompassed within the backyard/sideyard of his residence, does not constitute "[a] place . . . generally accessible to motor vehicles" within the meaning of MCL 257.625(1). Accordingly, this Court should decline to grant the relief requested by the prosecution and thereby affirm the decision reached by the majority of the Court of Appeals.

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ARGUMENT

I. THE MAJORITY DECISION OF THE MICHIGAN COURT OF APPEALS IS NOT "CLEARLY ERRONEOUS" AND WILL NOT RESULT IN "MATERIAL INJUSTICE" IF ALLOWED TO STAND BECAUSE THE UPPER-PORTION OF THE DEFENDANT'S PRIVATE RESIDENTIAL DRIVEWAY, WHICH IS ENCOMPASSED WITHIN THE BACKYARD/SIDE-YARD OF HIS RESIDENCE, DOES NOT CONSTITUTE AN AREA THAT IS "GENERALLY ACCESSIBLE TO MOTOR VEHICLES" UNDER MCL 257.625(1).

Plaintiff-Appellant has filed an Application for Leave to Appeal with this Court requesting that this Court grant leave to appeal, or in the alternative, peremptorily reverse the majority decision of the Michigan Court of Appeals. An application for leave to appeal must establish that grounds for granting the same exist. MCR 7.305(B). A list of potential grounds for appeal, which may be asserted in support of an application for leave to appeal, are expressly enumerated within MCR 7.305(B).

Plaintiff-Appellant asserts that grounds for appeal exist pursuant to MCR 7.305(B)(5)(a). The relevant portion of the court rule states as follows:

> (B) Grounds. The application must show that . . . in an appeal of a decision of the Court of Appeals, . . . the decision is clearly erroneous and will cause material injustice[.]

MCR 7.305(B)(5)(a). Specifically, Plaintiff-Appellant argues that the majority decision of the Michigan Court of Appeals is "clearly erroneous and will cause material injustice." (Application, p. ii.) In support of this contention, Plaintiff-Appellant argues that the majority decision was "clearly erroneous" because "defendant's actions fell within the plain language of MCL 257.625(1)," and further, because the majority "failed to give effect to the plain meaning of the phrase 'generally accessible to motor vehicles.' " (Application, p. 8; p. 10.) Plaintiff-Appellant fails to provide any explanation as to how the majority decision

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will cause "material injustice" if allowed to stand.

Plaintiff-Appellant's Application for Leave to Appeal fails to establish that the majority decision of the Court of Appeals was "clearly erroneous and will cause material injustice." MCR 7.305(B)(5)(a). As indicated by the following analysis, the majority of the Court of Appeals properly interpreted the relevant statutory phrase in light of the legislative intent underlying the statutory provision and therefore properly affirmed the circuit court's decision granting Defendant's Motion to Quash. Simply stated, the majority correctly determined that the upper-portion of Defendant's private residential driveway, which is encompassed within his backyard/side-yard, does not constitute a place that is "generally accessible to motor vehicles" under MCL 257.625(1). Accordingly, this Court should decline to grant leave to appeal, and further, decline to peremptorily reverse the majority decision of the Michigan Court of Appeals. [8]

A. STANDARD OF REVIEW

A trial court's decision to quash an information is reviewed for an abuse of discretion. People v Dowdy, 489 Mich 373, 379; 802 NW2d 239 (2011). An abuse of discretion occurs when the trial court "chooses an outcome that falls outside the range of principled outcomes." People v Musser, 494 Mich 337, 348; 835 NW2d 319 (2013). However, "[t]his Court reviews de novo questions of statutory interpretation." People v Gardner, 482 Mich 41, 46; 753 NW2d 78 (2008). Thus, "[t]o the extent that a lower court's decision on a motion to quash the information is based on an interpretation of the law,

8. Generally, peremptory disposition is reserved for cases in which the law is settled, the facts are not in dispute, and the decision below is clearly in error. Howard v White, 447 Mich 395, 408; 523 NW2d 220 (1994) (LEVIN, J., dissenting). Peremptory reversal is not appropriate in the instant matter, as the decision of the majority of the Court of Appeals was not clearly in error.

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appellate review of the interpretation is de novo." People v Miller, 288 Mich App 207, 209; 795 NW2d 156 (2010).

B. DISCUSSION

1. THE MAJORITY OF THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE UPPER PORTION OF DEFENDANT'S PRIVATE RESIDENTIAL DRIVEWAY, WHICH IS ENCOMPASSED WITHIN THE BACKYARD/SIDE-YARD OF HIS RESIDENCE, IS NOT A PLACE "GENERALLY ACCESSIBLE TO MOTOR VEHICLES" WITHIN THE MEANING OF MCL 257.625(1).

In the underlying criminal proceeding, Defendant-Appellee was charged with operating while intoxicated, contrary to MCL 257.625(1). MCL 257.625(1) provides, in pertinent part:

> A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated.

MCL 257.625(1). The above-cited statutory provision does not prohibit the operation of a motor vehicle while intoxicated in all areas within the state, rather the prohibition extends only to those areas specifically enumerated within the statute. The statute specifically provides that the operation of a vehicle while intoxicated is only prohibited if the operation occurs upon one of the following three distinct geographic areas: (1) "a highway," (2) "[a] place open to the general public," or (3) "[a] [place] generally accessible to motor vehicles." MCL 257.625(1); People v Nickerson, 227 Mich App 434, 575 NW2d 804 (1998). Accordingly, in order to sustain the charge of operating while intoxicated, the prosecution must establish that the operation of a motor vehicle occurred upon one of the aforementioned geographic areas.

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The issue presented to the Michigan Court of Appeals for consideration was one of statutory interpretation. The Court of Appeals was essentially asked to determine whether the upper-portion of Defendant's private residential driveway, which is encompassed within the backyard/side-yard of his residence, constitutes a place "generally accessible to motor vehicles" under MCL 257.625(1).

The primary goal of statutory interpretation is to ascertain and give effect to the legislative intent. In re Receivership of 11910 South Francis Rd (Price v Komalski), 492 Mich 208, 222; 821 NW2d 503 (2012). Generally, the intent of the Legislature may be discerned from the plain language of the statute. Id. If the statute is unambiguous, the court presumes that the Legislature intended the meaning plainly expressed, and further judicial construction is neither permitted nor required. DiBenedetto v West Shore Hosp, 461 Mich 394, 402; 605 NW2d 300 (2000). However, if a statute is "ambiguous on its face[,] so that reasonable minds could differ with respect to its meaning, judicial construction is appropriate to determine the meaning." In re MCI Telecommunications Complaint, 460 Mich 396, 411; 596 NW2d 164 (1999).

The words used in a statute are the "most reliable indicator" of legislative intent and should be "interpreted based on their ordinary meaning and the context within which they are used in the statute." People v Lowe, 484 Mich 718, 721-22; 773 NW2d 1 (2009). If a term is not expressly defined in the statute, it is permissible to consult dictionary definitions in order to aid in construing the term in accordance with its ordinary and generally accepted meaning. People v Lange, 251 Mich App 247, 253; 650 NW2d 691 (2002).

Generally, in interpreting a statute, the court must avoid interpretations that would

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render any part of the statute surplusage or nugatory. Zwiers v Growney, 286 Mich App 38, 44; 778 NW2d 81 (2009). Resistance to treating statutory words or phrases as mere surplusage "should be heightened when the words describe an element of a criminal offense." Ratzlaf v United States, 510 US 135, 140-41 (1994). Furthermore, the court should not read anything into a statute that is not within the manifest intent of the Legislature as indicated by the act itself. In re S.R., 229 Mich App 310, 314; 581 NW2d 291 (1998); see also, Book-Gilbert v Greenleaf, 302 Mich App 538, 541-542; 840 NW2d 743 (2013) (noting "[w]hen the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose[.]")

In the underlying appellate proceeding, the majority of the Court of Appeals properly construed the relevant statutory phrase to exclude the area upon which Defendant operated his vehicle on the date in question. The majority's interpretation of the relevant phrase was in accordance with the legislative intent, as evidenced by the plain language of the statute. Accordingly, the majority of the Court of Appeals properly affirmed the circuit court's decision to grant the Defendant's Motion to Quash. [9]

The majority of the Court of Appeals held that the portion of the Defendant's private residential driveway between his residence and his detached garage is not a place "generally accessible to motor vehicles." Rea, __ Mich App at __ ; slip op at 4. In reaching this conclusion, the court consulted a dictionary to determine the ordinary and generally

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9. Defendant-Appellee disagrees with the conclusion reached by the dissent. Questions of statutory interpretation and construction are questions of law. Robertson v Daimler Chrysler Corp, 465 Mich 732, 739; 641 NW2d 567, 571 (2002); People v Coutu, 459 Mich 348, 353; 589 NW2d 458 (1999).

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accepted meanings of the terms "generally" and "accessible." Id. at __; slip op at 3. This was permissible given the fact that neither term is expressly defined by statute. See Autodie, LLC v City of Grand Rapids, 305 Mich App 423, 434; 852 NW2d 650 (2014) ("When the Legislature has not defined a statute's terms, [a] [court] may consider dictionary definitions to aid in . . . interpretation.") The court noted that the term "generally" is an adverb and is commonly defined as "to or by most people; widely; popularly; extensively," and further, noted that "accessible," is an adjective, and it commonly means "that can be approached or entered . . . easy to approach or enter." Rea, __ Mich App at __; slip op at 3. The court further noted that "[i]n the statute, the adverb 'generally' modifies the adjective 'accessible.' " Id.

The court concluded that the "plain language of the statute prohibits driving while intoxicated in places where cars are 'regularly,' 'widely' and 'usually' expected to travel." Id. at 4. The court emphasized the fact that the inclusion of the term "generally" was intentional and the plain meaning of the term implies that access must not be limited or restricted. Id. The court indicated:

> That part of a private driveway . . . is a place accessible to a small subset of the universe of motor vehicles: those belonging to the homeowner, or those using the driveway with permission. This particular area of defendant's driveway is akin to a moat; it is an area which strangers are forbidden to cross but defendant could wade at will.

Id.

As indicated by the above, the Court of Appeals properly interpreted the phrase "generally accessible to motor vehicles" to exclude the specific area at issue in this case. Motor vehicles are not "widely," "regularly," or "usually" permitted to access the area where

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Mr. Rea is alleged to have operated his vehicle on the date in question.[10] The relevant area is located within Mr. Rea's residential backyard and/or side-yard. (EHT, p. 26, 11-13.) The area of operation was located a significant distance away from the portion of the driveway upon which vehicles may attempt to enter should they use the driveway to turn around. (PET, p. 10-11; p. 15, p. 25.) No reasonable operator of a motor vehicle would believe that he or she had the ability to enter the relevant area, as the same parallels Mr. Rea's residence and is located behind the fence line. See Appendix A. (EHT, p. 26, 8-13.) Furthermore, the nature of the area in question is not such that operators of motor vehicles would think that their use of the same is permissible, notwithstanding the fact that entry to the area was not precluded by a physical barrier.[11]

The Court of Appeals limited its decision to the specific facts and circumstances of the instant case. Rea, __ Mich App at __; slip op at 4, n 2, n 3. However, it is relevant to note that, generally speaking, operators of motor vehicles have no affirmative right or implied permission to use or access the relevant portion of a private residential driveway, nor do they have the ability to use the relevant portion in the same sense that they may use

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10. It is relevant to note that the common definition of "access," as set forth in the majority opinion, is not limited to the physical ability to enter. Rea, __ Mich at __; slip op at 3, n 1. An area is not deemed "accessible" merely because an individual (or a motor vehicle) has the physical ability to enter the area. An area may be rendered "inaccessible" due to the fact that an individual does not have "permission" to enter the area.

11. On the date in question, Officer DeLano parked his patrol car at the end of Defendant's driveway, thereby blocking the entryway and effectively precluding any and all vehicles from entering or exiting the driveway. (PET, p. 21, 18-24.) Thus, at the time Mr. Rea operated his vehicle, the entirety of his driveway was not "accessible" by any means, thereby further precluding the conclusion that the area in question is "generally accessible" to motor vehicles.

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a private parking lot by custom.[12] A private property owner would not reasonably anticipate that numerous motor vehicles would "widely," "usually," or "extensively" enter or otherwise use the relevant portion of his or her private residential driveway.[13]

Plaintiff-Appellant contends that the majority decision of the Court of Appeals is "clearly erroneous" because Defendant's actions fell within the plain language of MCL 257.625(1). Plaintiff-Appellant asserts that "[a]s a matter of law, an unsecured driveway connecting a residential garage to a public street is an area 'generally accessible to motor vehicles.'" (Application, p. 13.) In support of this contention, Plaintiff-Appellant argues that "there is nothing in the record to suggest that the driveway was somehow blocked off to prevent motor vehicles from entering or exiting." (Id.) However, Plaintiff-Appellant ignores the fact that, when interpreting a statute, the primary goal of the court is to discern and give effect to the intent of the legislature. Turner v Auto Club Ins Ass'n, 448 Mich 22, 27; 528 NW2d 681 (1995). An analysis of the plain language of the statute indicates that the

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12. An analysis of the statutory definition of "private driveway" lends support to this contention. "Private driveway " is defined as "any piece of privately owned and maintained property which is used for vehicular traffic, but is not open or normally used by the public." MCL 257.44(1). While a private driveway is used for vehicular traffic, it is not "open or normally used" by an unlimited number of drivers. The definition of private driveway should be read in connection with the definition of "private road." "Private road" is defined as a road, "which is normally open to the public and upon which *persons other than the owners located thereon may also travel.*" MCL 257.44(2) (emphasis supplied). Thus, a private driveway, by definition, is not generally accessible to motor vehicles because operators of vehicles other than the owner(s) of the driveway may not typically travel thereon.

13. It is relevant to note that courts of other jurisdictions have also concluded that their respective OWI statutes, which contain different language than the statute at issue, do not apply to private residential driveways. See, e.g., Com v Virgilio, 79 Mass App Ct 570, 947 NE2d 1112 (2011) (private residential driveway that served two residences did not constitute "[a] way or [a] place to which the public has a right of access" or " [a] way or [a] place to which members of the public have access as invitees or licensees"); State of Nebraska v McCave, 282 Neb 500 (2011) (defendant's vehicle, which was located on a residential driveway and overhanging a public sidewalk, was not operated on "private property that is open to public access"); State v Knott, 132 Idaho 476, 974 P2d 1105 (1999) (residential driveway was not "private property open to the public" despite the fact that social guests and persons with business at the residence are permitted to use the driveway).

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Legislature did not intend to limit the meaning of the term "access" to the mere physical ability to enter. As the majority of the Court of Appeals correctly noted, the fact that "other vehicles had the ability to enter the area" is irrelevant as "physical ability" to enter is "not the touchstone of general accessibility." Rea, __ Mich App at __; slip op at 4. The court emphasized that:

> [H]ad the Legislature intended to include every place in which it is physically possible to drive a car, it could have so provided. However, the plain language of the statute prohibits driving while intoxicated in places where cars are regularly, 'widely,' and 'usually' expected to travel. The area of a private driveway between one's detached garage and house is not such a place.

(Id.) The majority of the Court of Appeals simply declined to accord an unintended meaning to the statutory language, and further, declined to read absent term(s) or phrase(s) into the statute. The majority was correct in declining to do so, as it is a well-established principle that "provisions not included in a statute by the Legislature should not be included by the courts." Polkton Charter Twp v Pellegrom, 265 Mich App 88, 103; 693 NW2d 170, 178 (2005).

Plaintiff-Appellant further argues that the relevant area of operation is "generally accessible to motor vehicles" because the Defendant and a few select individuals could access the same. (Application, p. 13.) This argument is devoid of merit. Plaintiff-Appellant ignores the fact that the Legislature consciously, specifically, and intentionally included the term "generally" in the statute. The plain language of the statute indicates that the Legislature did not intend for the statute to apply in areas that are merely "accessible to motor vehicles," rather the accessibility must be "wide," "extensive," "usual," and "without regard to particulars or exceptions." As the Court of Appeals correctly acknowledged:

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> [H]ad the Legislature wanted to criminalize driving while intoxicated in one's own driveway it could have outlawed the operation of a motor vehicle in any place 'accessible to motor vehicles,' omitting the adverb 'generally.' But the statute uses the word 'generally' to modify the word 'accessible,' and the combined modifier to further describe 'other place.' The commonly understood and dictionary-driven meanings of the term "generally" in this context compel the conclusion that the Legislature meant to limit the reach of MCL 257.625(1).

Rea, __ Mich App at __; slip op at 4. Plaintiff-Appellant seemingly argues that the majority should have disregarded the terms specifically used by the Legislature when enacting the statute. To do so would be improper, as a court is merely to apply the language of a statute as enacted, without addition, subtraction, or modification. Lesner v Liquid Disposal, Inc., 466 Mich 95, 101; 643 NW2d 553 (2002); Bennett v Spear, 520 US 154, 173; 117 S Ct 1154; 137 L Ed 2d 281 (1997) ("It is the cardinal principle of statutory construction that it is [the] [court's] duty to give effect, if possible, to every clause and word of a statute[.]")

Finally, Plaintiff-Appellant argues that the majority erred by failing" to recognize that the general public need not have access to the 'upper portion' of defendant's driveway." (Application, p. 13.) Plaintiff-Appellant states that this error is evidenced by "footnotes two and three." (Application, p. 13.) However, an analysis of the majority decision indicates that the court properly acknowledged that "a place open to the general public" and "other place generally accessible to motor vehicles" are two separate and distinct statutory categories. Rea, __ Mich App at __; slip op at 3-4. The court considered the applicability of both categories and thereafter concluded that the relevant portion of Mr. Rea's driveway did not fall within the meaning of *either* phrase. (Id.) Furthermore, the referenced footnotes do not evidence a conflation of categories by the court, but instead evidence the court's intent to interpret the statutory phrase in accordance with the underlying purpose

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of the statute, which is to protect unsuspecting individuals, who are lawfully present in an area, from a drunk driver.[14]

As indicated by the aforementioned analysis, the majority of the Michigan Court of Appeals properly interpreted the relevant statutory phrase to exclude the upper portion of Defendant's residential driveway, and therefore, properly affirmed the circuit court's decision. The majority decision of the Court of Appeals was not "clearly erroneous" and will not result in "manifest injustice" if permitted to stand. Accordingly, this Court should decline to grant leave to appeal, and further, decline to peremptorily reverse the majority's decision.

2. INTERPRETING THE RELEVANT STATUTORY PHRASE TO INCLUDE THE UPPER-PORTION OF DEFENDANT'S PRIVATE RESIDENTIAL DRIVEWAY, WHICH IS ENCOMPASSED WITHIN THE BACKYARD/SIDE-YARD OF HIS RESIDENCE, WOULD BE CONTRARY TO THE EXPRESSED INTENT OF THE LEGISLATURE.

MCL 257.625(1) does not prohibit the operation of a motor vehicle while intoxicated in all geographic areas within the state. The prohibition extends only to those areas specifically enumerated within the statute, including: (1) "a highway," (2) "[a] place open to the general public," or (3) "[a] [place] generally accessible to motor vehicles, including an area designated for the parking of vehicles." MCL 257.625(1). The specific enumeration of distinct geographic areas evidences a clear legislative intent not to criminalize the

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14. See People v Tracy, 18 Mich App 529, 532; 171 NW2d 562 (1969). ("Since we may reason that it is the intention of the legislature to protect the general public from operators of motor vehicles who are under the influence of alcohol, it is logical to apply the statute to drinking drivers who are attempting to drive their vehicles in areas open to the general public which are not normally used by sober drivers for normal travel. The possibility of injury to the public does not abate, but instead may well be increased when a drinking driver is operating his vehicle on the public sidewalk, in a public park, or on a public lawn. This is obviously due to the fact that the public cannot be expected to be as aware of the presence of an impaired driver and his automobile which are proceeding in areas not normally open to vehicular traffic as they might be if they were in an area where automobiles are expected to be present.")

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operation of a vehicle while intoxicated in *all areas* within the state.[15]

The Michigan Legislature made a conscious decision not to extend the applicability of MCL 257.625(1) to all areas within the state and instead limited the reach of the statute to the areas specifically enumerated therein.[16] If the Legislature intended to prohibit the operation of a vehicle while intoxicated upon the upper portion of a private residential driveway they would have explicitly stated such, as such an area does not directly fit within the meaning of "highway," "[a] place open to the general public," or "[a] [place] generally accessible to motor vehicles." In addition, the term "private driveway" is a statutorily defined term under the Michigan Vehicle Code (MCL 257.44[1]), and therefore, it is likely that the Legislature would have expressly included this term within the statute if it intended to prohibit the conduct at issue in such an area.

If this Court were to adopt Plaintiff-Appellant's argument and construe the relevant statutory phrase to include the relevant portion of a private residential driveway, the specific enumeration of distinct areas within the statute would be rendered meaningless, as there would be no area within the state where the statute would not apply.[17] This Court

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15. The Legislature expressly noted that the statutory provision in question does not apply to areas that are not "specifically referred" to therein. See, e.g., MCL 257.601 ("The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.")

16. The Michigan Legislature has actually precluded the operation of a *commercial vehicle* while intoxicated in all areas "within this state." See MCL 257.625m. This indicates that the Legislature is aware that such a prohibition may be imposed and lends further support to the conclusion that the Legislature specifically intended to omit certain areas from the scope of MCL 257.625(1).

17. Furthermore, given the broad definition of "operation" under Michigan law, it appears that if the court were to conclude that the upper-portion of Defendant's private residential driveway constitutes a place that is "generally accessible to motor vehicles," a citizen consuming alcohol while cleaning out the interior of his or her vehicle (with the keys in the ignition) may be subject to criminal prosecution under MCL 257.625(1). It is clear that the Legislature did not intend to accomplish such a purpose when enacting the relevant statutory provision.

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should refuse to extend the coverage of the statute to criminalize the conduct at issue because, given the particularization and specificity with which the Legislature has set out the areas upon which drunk driving is prohibited, to do so would amount to an enlargement of the statute rather than construction of it. Moreover, an absent phrase should not be read into the statute, as to do so would effectively rewrite a law that the Legislature has affirmatively, purposely and specifically enacted. See Hanson v Mecosta Co. Road Comm'rs, 465 Mich 492, 504, 638 NW2d 396 (2002) (noting that a court's function in interpreting a statute is not "to independently assess what would be most fair or just or best public policy," but "to discern the intent of the Legislature from the language of the statute it enacts").

The majority of the Court of Appeals properly interpreted the relevant statutory phrase in a manner that is consistent with the expressed legislative intent. Accordingly, it was proper for the majority to affirm the circuit court's decision granting Defendant's Motion to Quash.

REQUESTED RELIEF

As indicated by the aforementioned analysis, the majority decision of the Michigan Court of Appeals is not "clearly erroneous" and will not result in "manifest injustice" if permitted to stand. Accordingly, Defendant-Appellee respectfully requests that this Court decline to grant the relief requested by Plaintiff-Appellant and affirm the majority decision of the Michigan Court of Appeals.

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